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United States

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Supreme Court, U.S.
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CASPAR W. WEINBERGER, *Secretary of Defense, et al.*,
Petitioners,

vs.

CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF FELLOWSHIP OF RECONCILIATION, et al., AMICI CURIAEM, IN SUPPORT OF RESPONDENTS

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IN THE SUPREME COURT
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CASPAR W. WEINBERGER, SECRETARY OF DEFENSE, ET AL.,

Petitioners,

v.

CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE OF THE FELLOWSHIP OF RECONCILIATION, THE GENERAL CONFERENCE MENNONITE CHURCH, THE COALITION FOR A NEW FOREIGN AND MILITARY POLICY, CLERGY AND LAITY CONCERNED, THE WAR RESISTERS LEAGUE/ WEST, SANE, THE MT. DIABLO PEACE CENTER, NATIONAL LAWYERS GUILD - SAN FRANCISCO BAY AREA CHAPTER, NUKEWATCH, BROTHERS OF HOLY

CROSS-EASTERN PROVINCE, GROUND ZERO CENTER FOR NONVIOLENT ACTION, THE TRAPROCK PEACE CENTER, THE INTERFAITH CENTER TO REVERSE THE ARMS RACE, NUCLEAR FREE STATE, PEACE EDUCATION AND ACTION CENTER, ENVIRONMENTAL ACTION, THE DOGWOOD ALLIANCE, THE CATFISH ALLIANCE, NUCLEAR INFORMATION AND RESOURCE SERVICE, TRADE UNIONISTS FOR DEMOCRATIC ACTION, THE THOMAS MERTON CENTER, THE ENVIRONMENTAL POLICY CENTER, THE RESOURCE CENTER FOR NON-VIOLENCE, THE UNIVERSITY OF WISCONSIN PEACE CONVERSION PROJECT, THE MX ACTION GROUP, THE SOUTH PLAINS ALTERNATIVE RESOURCES COALITION, NETWORK, THE SISTERS OF MERCY, THE INTERCOMMUNITY CENTER FOR JUSTICE AND PEACE, STOP PROJECT ELF INC., THE 8TH DAY CENTER FOR JUSTICE, CITIZENS' CALL, THE CALDWELL DOMINICANS, THE SOCIAL JUSTICE COMMITTEE OF THE SISTERS OF ST. JOSEPH, THE SISTERS OF ST. JOSEPH OF PEACE, THE DOMINICAN SISTERS OF THE SICK POOR, THE URSULINE SISTERS OF BLUE POINT, THE BROTHERS OF HOLY CROSS, THE PAULIST SOCIAL COMMITTEE, THE BLAUVELT DOMINICANS, THE BENDIX CONVERSION PROJECT, THE INTERFAITH PEACE FELLOWSHIP, SAFE, APPROPRIATE FORMS OF ENERGY, THE SAGEBRUSH ALLIANCE, THE UNIVERSITY OF CALIFORNIA NUCLEAR WEAPONS LABS CONVERSION PROJECT, PRIESTS OF THE

SACRED HEART, AND THE RIVERSIDE DISARMAMENT PROJECT, IN SUPPORT OF RESPONDENTS

INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule No. 36, Fellowship of Reconciliation, et al., respectfully submit this brief amici curiae in support of respondents. Consent to the filing of this brief has been granted by counsel for both parties. Copies of these letters of consent have been lodged with the Clerk of this Court.

The Fellowship of Reconciliation (Box 271, Nyack, NY 10960) is an international, inter-religious organization which believes in and works for the nonviolent settlement of disputes among persons and among nations. The Fellowship regards nuclear weapons as the ultimate expression of violence. It believes the public can best be protected against the threat they represent by widespread dissemination and discussion of the relevant facts concerning their manufacture, storage and deployment.

The General Conference Mennonite Church (722 Main Street, Newton, KS 67114) comprises 325 congregations in the United States and Canada, with a total adult membership of 62,962. It is an historic peace

church whose heritage includes a commitment to peacemaking since the Sixteenth Century in Europe's Reformation. The church and its members have been involved for the past decade in public education about the local hazards and global threat to peace posed by the manufacture and deployment of nuclear weapons.

The Coalition for a New Foreign and Military Policy (120 Maryland Ave., N.E., Washington, CA 20002) is composed of 46 national labor, religious, peace, research and social action organizations working for a peaceful, non-interventionist and demilitarized U.S. foreign policy.

Clergy and Laity Concerned (198 Broadway, New York, NY 10038) is a nationwide inter-denominational organization which works for the alleviation of injustice and human suffering in a variety of social areas. The organization holds nuclear weapons storage to be a potential danger requiring urgent public examination.

The War Resisters League/West (85 Carl St., San Francisco, CA 94117) is a longtime nonviolent organization opposing war and the causes of war. WRL/West is a cofounder and active participant in the national Nuclear Weapons Facilities Task

Force and continues to be active in organizing around Bay Area nuclear weapons facilities. It is involved in educating the public on the dangers and risks of nuclear weapons.

S.A.N.E. is a national citizens organization founded more than twenty years ago during the contraversy around the health effects of open air nuclear weapons testing. S.A.N.E. believes our citizenry has the right to full information about all aspects of nuclear weapons which affect our health and safety.

The Mt. Diablo Peace Center in Walnut Creek, CA was established in 1969 primarily to educate and activate local citizens around the threats of nuclear weapons and war. The Concord Naval Weapons Station Task Force is made up of individuals who are joined in outrage by the liberties taken with our health and safety in the name of national security. It believes that Environmental Impact Statements for all nuclear weapons facilities are essential to our real security.

The National Lawyers Guild-San Francisco Bay Area Chapter (558 Capp. St., San Francisco, CA 94110) consists of over nine hundred lawyers, law students, legal workers

and jailhouse lawyers involved in the movement for fundamental social change. The Guild advocates a halt to the proliferation of nuclear weapons, nuclear power facilities and radioactive wastes.

Nukewatch (315 West Gorham St., Madison, WI 53703) is the public education project of The Progressive Foundation, a tax-exempt educational institution formed to promote the exercise of First Amendment rights and foster public awareness of, and debate around, issues of urgent public concern. In the belief that decisions on crucial nuclear issues should be made by an informed citizenry, Nukewatch has focused on lifting the shroud of secrecy and mystery from nuclear issues and helping the public get the information it needs to make informed decisions.

Brothers of Holy Cross-Eastern Province (85 Overlook Circle, New Rochelle, NY 10804) is part of an international congregation of priests and brothers engaged in pastoral and education work. Through shareholder resolutions, the organization has addressed various corporations on their involvement in the production of nuclear arms. With Pope John Paul II, it opposes the use of nuclear weapons and attempts to educate the

public about the dangers of nuclear arms and the arms race.

Ground Zero Center for Nonviolent Action (16159 Clear Creek Road, N.W., Poulsbo, WA 98370) is a center oriented toward education and direct action on arms issues. The organization believes that full disclosure of the environmental impact of nuclear weapons stored by the U.S. Navy is essential to public health and safety in the Puget Sound area of the State of Washington.

The Traprock Peace Center (Woolman Hill, Keets Road, Deerfield, MA 01342) is an organization which works for global disarmament through mutual agreement between the United States and the Soviet Union on a moratorium on further nuclear weapons production. It believes that full knowledge of the environmental impact of nuclear weapons will facilitate that goal.

Nuclear Free State (1145 E. 6th St., Tucson, AZ 85719) is a public interest citizens group devoted to eliminating the environmental and public health threat presented by nuclear power and nuclear weapons in Arizona. It favors full disclosure of the environmental impact of nuclear weapons storage and deployment.

Peace Education and Action Center (64 Edgewood Ave., New Haven, CT 06511) is an organization dedicated to achievement of a more peaceful world through public education and action. It is concerned about the threat posed to world peace and safety by the manufacture, storage and deployment of nuclear weapons.

Environmental Action (1346 Connecticut Ave., N.W., Washington, DC 20036) is a 25,000 member lobby focusing on environmental issues, particularly those having high urban impact. The organization favors full disclosure of the environmental impact of nuclear weapons on urban life.

The Dogwood Alliance (5904 West Markham, Little Rock, AR 72205) is a public interest group devoted to increased public awareness of environmental issues in Arkansas and to the promotion of safe energy alternatives. It believes that nuclear power and nuclear weapons pose grave environmental hazards.

The Catfish Alliance (814 St. Francis St., Mobile, AL 36602) is an organization devoted to protecting and improving the quality of life among the Gulf Coast people in southern Alabama. It advocates full disclosure of any possible threats to the environment from nuclear sources.

Nuclear Information and Resource Service (1536 16th St., N.W., Washington, DC 20036) is an information clearinghouse and networking center for citizens concerned about nuclear energy. It is also deeply concerned about the hazards associated with the nuclear weapons race.

Trade Unionists for Democratic Action (P.O. Box 294, Boro Station, Groton, CT 06340) is an organization of rank-and-file workers in the Electric Boat Division of General Dynamics Corporation. As workers employed at a nuclear weapons production facility engaged in the construction of nuclear fast-attack and Trident ballistic submarines, the organization is concerned about the accountability and occupational and environmental safety of the storage, transportation, production and deployment of nuclear weapons.

The Thomas Merton Center (1111 East Carson St., Pittsburgh, PA 15206) is a Pittsburgh-based peace and justice ministry with members throughout the United States. Its members attempt to confront and transform the buildup of nuclear arms through education in churches and schools and by means of public protests.

The Environmental Policy Center (317

Pennsylvania Ave., S.E., Washington, DC 20003) is a private, non-profit public interest group dedicated to the solution of environmental issues. It believes the preparation of environmental impact statements for nuclear weapons production and storage facilities is essential to the public interest.

The Resource Center for Non-Violence (515 Broadway, Santa Cruz, CA 95062) is a non-profit public education project devoted to the promotion of non-violence as a force for personal and social change. The Center believes nuclear weapons to be a form of systemic violence having broad impact on society and the environment.

The University of Wisconsin Peace Conversion Project (315 Gorham St., Madison, WI 53705) is a citizens' organization dedicated to the conversion of military research at the University of Wisconsin to peaceful purposes. It is particularly concerned about the adverse impact of research leading to the military use of nuclear energy.

The MX Action Group (2606 22nd St., Lubbock, TX 79410) is an educational organization which seeks to promote a broader understanding among the people of West Texas

of the full impact of deployment of the MX missile proposed by the United States Air Force. It believes that access to knowledge about nuclear weapons deployment is essential to an understanding of such issues.

The South Plains Alternative Resources Coalition (Box 4026, Lubbock, TX 79404), serving the academic community of Texas Tech University, is a citizens' organization which explores the interconnections between nuclear energy and nuclear weapons. It believes safe energy can best be achieved on the basis of full public understanding of the issues surrounding nuclear weapons.

NETWORK (806 Rhode Island Ave., N.E., Washington, DC 20018) is a Catholic social justice lobby which focuses on social justice issues and human rights as affected by national legislation. Participation of people in decisions that affect them, and faithful stewardship of the earth, are values NETWORK would see promoted by a nuclear weapons environmental impact statement.

The Sisters of Mercy (10024 South Central Park Ave., Chicago, IL 60642) are a Roman Catholic religious congregation of women whose mission is to minister to the poor, the sick, the uneducated, and anyone

wounded by contemporary society. The Sisters believe that full disclosure of the facts about nuclear weapons will demonstrate that their presence constitutes a tremendous threat to the welfare of human beings.

The Intercommunity Center for Justice and Peace (20 Washington Square North, New York, NY 10011) was established by religious congregations in the greater New York City area to solve social problems in ways which consistently reflect Gospel values. Its present focus is on disarmament and human rights.

Stop Project ELF, Inc. (Rural Route 2, Box 166Q, Ashland, WI) is a non-profit membership organization which, among other things, disseminates information on the health and environmental effects of nuclear weapons systems, especially the United States Navy's "Project ELF" communications system designed to send messages to submarines. The organization believes that the nuclear arms race threatens public health and safety, and that the first step in addressing the crises is the development of public information about the health and environmental consequences of nuclear weapons systems.

The 8th Day Center for Justice (22 East

Van Buren, Chicago, IL 60605) is a coalition of ten Catholic religious communities which work toward building a just society. One primary focus is educating others to the danger of nuclear weapons. This is well summarized in the Church's 1976 statement to the United Nations: "The armaments race is to be condemned unreservedly. By virtue of the nature of modern weapons...[it] is in fact a danger, an injustice, a mistake, a wrong, a folly...Christians must denounce humanity's scientific preparations for its own demise. They must also alert public opinion to the growing perils resulting from nuclear excesses (explosions) and from the transport, stockpiling and proliferation of atomic weapons."

Citizens' Call (1321 East 400 South, Salt Lake City, UT 84720) is a non-profit citizens' organization which seeks compensation for the radiation victims of the United States nuclear weapons testing and the discontinuation of further nuclear weapons testing. The organization believes that full disclosure of the physical effects of nuclear weapons is essential to the public interest.

The Caldwell Dominicans (119 Clerk St., Jersey City, NJ 07305); the Social Justice

Committee of the Sisters of St. Joseph of Peace (P.O. Box 288, Jersey City, NJ 07303); the Dominican Sisters of the Sick Poor (475 Riverside Drive, New York NY 10027); the Ursuline Sisters, Blue Point, NY (81-15 Utopia Parkway, Jamaica, NY 11432); the Brothers of Holy Cross (St. Joseph Center, Valatie, NY 12184); the Paulist Social Committee (86 Dromore Road, Scarsdale, NY 10583); and the Blauvelt Dominicans (460 W. 44th St., New York, NY 10036) are Roman Catholic religious orders promoting world peace and justice. They believe the interests of the American people would best be served by full discussion of the implications of nuclear weapons.

The Bendix Conversion Project (811 E. 47th St., Kansas City, MO 64110) is a citizens' group which seeks conversion of the Kansas City factory of the Bendix Corporation, which now manufactures parts for thermonuclear weapons, to peaceful purposes. The Project believes that disclosure of the full impact of nuclear weapons is essential to its objective.

The Interfaith Peace Fellowship (2909 Pinewood Drive, Virginia Beach, VA 23452) is an inter-denominational citizens' group which works for social justice and the

peaceful settlement of disputes. The Fellowship advocates full discussion of the potential hazards of nuclear weapons.

The Sagebrush Alliance (704 West McWilliams, Las Vegas, NV 89106) is a public interest group which seeks to protect citizens of southern Nevada from the effects of nuclear weapons testing, nuclear waste dumping, and similar pollutants. It advocates full disclosure of the environmental, economic, and public health impact of nuclear activities.

The University of California Nuclear Weapons Labs Conversion Project (944 Market St., San Francisco, CA 94102) is a broad-based citizens' group which seeks conversion of the University of California nuclear weapons labs at Los Alamos, NM, and Livermore, CA, to peaceful purposes. The Project long has advocated full disclosure of the environmental impact of nuclear weapons.

Priests of the Sacred Heart (Sacred Heart Monastery, WI 53130) is a Roman Catholic religious order which favors peaceful settlement of international disputes. The organization believes the public should be made fully aware of the hazards of nuclear weapons.

The Interfaith Center to Reverse the Arms Race (132 North Euclid Ave., Pasadena, CA 91101) seeks to educate and mobilize the religious community of Southern California to raise a voice of conscience in concerted opposition to the nuclear arms race. By local education and organizing programs--which become models that can be applied elsewhere--it seeks to contribute to national efforts. The Center believes that people are empowered to act when equipped with knowledge. Therefore, it is imperative that knowledge about the nuclear arms race include public information about the manufacture, storage, and deployment of nuclear weapons.

Safe Appropriate Forms of Energy (901 West State St., Athens, OH 45701) is an anti-nuclear, pro-alternative energy group made up of concerned citizens and students in Athens, Ohio. It seeks to educate the public on the dangers of nuclear power and nuclear weapons, and on the link between the two.

The Riverside Church Disarmament Program is involved in an effort to educate and activate the religious community nationwide on the growing threat of nuclear and conventional war. As part of its work to halt and reverse the arms race, it believes

that informed discussion about the health, safety and environmental implications of nuclear weapons production and deployment is essential and long overdue.

STATEMENT OF THE CASE

Amici here incorporate by reference the Statement of the Case set out in the Brief for Respondents filed herein.

SUMMARY OF ARGUMENT

The legislative history of the National Environmental Protection Act of 1969, 42 U.S.C. §4321, et seq. and the judicial interpretations following its enactment evince a powerful public policy in favor of requiring compliance with its procedural requirements even where security interests are at stake. In attempting to shield their acts from the scrutiny required by NEPA in a situation involving the safety of hundreds of thousands of people, Petitioners offer the worn rationale that information necessary to inform the decisionmakers and the public of the consequences of nuclear weapons storage is "classified" and "restricted." If this classification actually protected such data from circulation and public dissemination, Petitioners' argument might have some validity. In fact, the presence of nuclear weapons at many places in the United States

is common knowledge notwithstanding the refusal of the Department of Defense to confirm or deny exact locations. Information about the location and general characteristics of such weapons can be obtained readily from public sources.

Even if the location of nuclear weapons were not a matter of common knowledge in the United States, the information is doubtless known to other nations by means of advanced satellite and other technologies.

The refusal of responsible authorities to acknowledge what is in fact known to the general public or to other nations, or both, leaves the government and public unprepared to cope with potential dangers arising from the presence of nuclear weapons.

The result of Petitioners' futile and fruitless policy of refusing to confirm or deny the presence of nuclear weapons at any particular location is that no one has examined the potential hazards of stationing and storing nuclear weapons at various places in the United States, some of them close to major population centers.

There is a growing trend in constitutional and statutory law toward protecting and extending the public's right to infor-

mation concerning its health. NEPA and the Atomic Energy Act of 1946, as amended 42 U.S.C. §§2011, et seq., along with regulations promulgated pursuant to these statutes, specifically recognize the interest in public dissemination of technical information. Recent legislation in the field of toxic substances, pesticides and water pollution control also evidence this policy. At a time when scientific information must be accessible for citizens to make informed decisions intimately affecting their health and welfare, this and other courts have articulated a doctrine protecting a right of access to such information. Failure to require an Environmental Impact Statement in the case sub judice would imperil this policy.

For these reasons, amici join with Respondents in urging that the ruling of the United States Court of Appeals for the Ninth Circuit be upheld and that the Petitioners be ordered to comply with the Environmental Impact Statement provisions of the National Environmental Policy Act.

INTRODUCTION

Petitioners have argued that they cannot comply with the mandates of the National

Environmental Policy Act because they can neither confirm nor deny the presence of nuclear weapons at any particular location, and that to prepare an Environmental Impact Statement would identify the presence, design and type of such weapons. For the reasons set forth below, amici believe that Petitioners' non-acknowledgement policy is an inadequate justification for refusing to prepare an Environmental Impact Statement, and for refusing to give the public the information it needs to make intelligent decisions concerning crucial questions of public safety and, perhaps, survival.

ARGUMENT

I

LEGISLATIVE HISTORY OF THE NATIONAL ENVIRONMENTAL PROTECTION ACT AND INTERPRETATIVE CASE LAW INDICATE THE SIGNIFICANCE WHICH HAS BEEN ATTACHED TO COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS OF THE ACT

Petitioners state that "NEPA requires no more than that agencies comply with its policies 'to the fullest extent possible,'" citing §102 of the Act, 42 U.S.C. 4332. (Brief of Petitioners at p. 18, emphasis added.) Their interpretation ignores the import attached to this language by its

drafters:

> [It] is the intent of the conferees that the provision "to the fullest extent possible" shall not be used by any Federal Agency as a means of avoiding compliance with the directives set out in section 102. Rather, the language in section 102 is intended to assure that all agencies of the Federal Government shall comply with the directives set out in said section "to the fullest extent possible" under their statutory authorizations and that no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance. 115 Cong. Rec. (parts 29 and 30) 39702-39703 (1969) House Conferees) and Id., 40417-40418 (1969) (Senate Conferees).

While the bill was still in committee, Senator Jackson, NEPA's principal sponsor, characterized the requirements of §102 as "action-forcing" and stated that "[o]therwise, the lofty declarations [in §101] are nothing more than that." Hearings on S.1075, S. 237 and S. 1752, Before Senate Committee on Interior and Insular Affairs, 91st Cong.

1st Sess. 116 (1969). The Committee's Report stressed the importance of the "action-forcing" provisions, viewing them as requiring full and rigorous consideration of environmental values as an integral part of agency decisionmaking. S. Rep. No. 91-296, 91st Cong., 1st Sess. (1969). Once the bill reached the Senate Floor, Senator Jackson once again stressed the importance of the procedural provisions:

> To insure that the policies and goals defined in this act are infused into the ongoing programs and actions of the Federal Government, the act also establishes some important "action-forcing" procedures. 115 Cong. Rec. (Part 30) at 40416.

Case law has followed the Congressional mandate in this regard. In a full exposition of the background and purposes of NEPA, Calvert Cliffs Coord. Com. v. United States A.E. Com'n 449 F. 2d 1109, 1112 (DC Cir. 1971) Justice Skelly Wright declared that "Perhaps the greatest importance of NEPA is to require the Atomic Energy Commission and other agencies to consider environmental issues just as they consider other matters within their mandates." Aware of the strength of the Congressional intent to force compliance with

NEPA by federal agencies, Justice Wright made the expressed views of the bill's drafters "the dispositive factor in our interpretation" of NEPA's provisions and insisted that the phrase "to the fullest extent possible" of §102 "does not provide an escape hatch for foot-dragging agencies ...Congress did not intend the Act to be such a paper tiger." Id., at 1114.

In that case, the foot-dragging agency was the Atomic Energy Commission, which had proposed inadequate regulations to govern environmental impact considerations in the construction of nuclear power plant facilities. Of these regulations, Justice Wright said:

> We believe that the Commission's crabbed interpretation of NEPA makes a mockery of the Act. Id., at 1117.

In this case, Petitioners have cast a bogus shroud of secrecy around information regarding storage sites for nuclear weapons and assert that labeling something "restricted" makes it so. By means of such semantic legerdemain, Petitioners intend to insulate all their actions regarding the subject of such data from the "action-forcing" provisions of NEPA.

Other courts have followed Justice

Wright's lead. In Rhode Island Committee on Energy v. the General Services Administration, 397 F. Supp. 41 (R. I. 1975), defendant General Services Administration proposed to dispose of surplus government property to an electric utility which planned to construct a nuclear power plant on the site. Defendants proffered the justification that the state of urgency caused by the nation's energy crisis and the unique suitability of the site should permit the sale without the filing of an EIS. The court would not permit the spectre of the energy crisis to excuse full compliance with NEPA. Id., at 58.

Other circuits have demonstrated the same reluctance to excuse compliance with the procedural requirements of NEPA. In Ely v. Velde, 451 F. 2d 1130 (4th Cir. 1971) Plaintiff sought to compel Defendant Law Enforcement Assistance Administration (LEAA) to file an EIS prior to constructing a medical and reception center for Virginia prisoners. Defendant contended that the governing statute for the LEAA, 42 U.S.C. §3701 et seq. (the "Safe Streets Act"), precluded NEPA interference or any Federal interference in the spending of their grant. In examining the "Safe Streets Act" the

Court found that a purpose of the Act was the protection of local police autonomy. However, the Court found no reason why that legislative goal should undercut the solution adopted by Congress to preserve and protect other important societal values including our natural and cultural environments. See also City of Rochester v. U.S. Postal Service, 541 F. 2d 967 (2d Cir. 1976); National Helium Corp. v. Morton, 326 F. Supp. 151-156 (Kan. 1971) aff'd. 455 F. 2d 650 (10th Cir. 1971).

Compliance with §102 of NEPA may be excused only when an agency can point to a clear and unavoidable conflict with other statutory authority. Of these purported conflicts courts have found "surprisingly few." W. Rodgers, Handbook on Environmental Law (1977) at 718. Courts have looked to the Congressional intent behind both statutes in determining whether a conflict exists. Generally a conflict has been found only where the delay inherent in compliance with the EIS process would frustrate the purpose of the other statute. Flint Ridge Development Company v. Scenic Rivers Association of Oklahoma, 426 U.S. 776 (1976); Gulf Oil Corporation v. Simon, 502 F. 2d 1154 (Temp. Em. Ct. App. 1974); Atlanta Gas Light Company v.

Federal Power Association, 476 F. 2d 142 (5th Cir. 1973); Cohen v. Price Comm'n, 337 F. Supp. 1236 (S.D.N.Y., 1972); Rodgers, Handbook, 718, 764.

There is no national security exemption. As Judge Tamm wrote in an opinion for the District of Columbia Circuit, "There is no support in either the statute or the cases for implying a 'national defense' exemption from NEPA. (Citing cases) The Navy, just like any federal agency, must carry out its NEPA mandate 'to the fullest extent possible' and this mandate includes weighing the environmental costs of the Trident Program even though the project has serious national security implications." Concerned About Trident v. Rumsfield, 555 F. 2d 817, 823 (D.C. Cir. 1977). In that case, the Navy had prepared an inadequate EIS on a proposed site of a support facility for the Trident submarine program. See also Jackson City, Mo. v. Jones, 571 F. 2d 1004 (8th Cir. 1978); Natural Resources Defense Council, Inc. v. Morton, 458 F. 2d 827 (D.C. Cir. 1972).

In summary, while the general substantive policy of NEPA is a flexible one, its procedural provisions establish a strict standard of compliance and are "enforced

with a vengeance." Calvert Cliffs, supra, at 1112 and Rodgers, supra, at 717. In the words of one district court, "It is hard to imagine a clearer or stronger mandate to the Courts." Texas Committee on Natural Resources v. United States, 1 Envir. Cas. 1303, 1304 (W.D. Texas, 1970).

II

A CLOSE LOOK AT THE EXTENT OF INFORMATION PUBLICLY AVAILABLE ON THE LOCATION AND ACTIVITIES OF NUCLEAR WEAPONS STORAGE FACILITIES REVEALS THAT PETITIONERS' RELIANCE ON "CLASSIFIED INFORMATION" EXALTS SEMANTICS OVER REALITY.

In Concerned About Trident, supra, the court rejected the Navy's reliance on "the over-used rubric of national defense." Id., at 823. In this case, the Navy invokes yet another shibboleth, the policy of preserving the confidentiality of "classified information" and "restricted data." It is contended that preparation of an EIS, "...would necessarily reveal highly classified information about the types of weapons in our nuclear arsenal, their design and capabilities, the design capacities and vulnerabilities of the facilities in which they are stored, and the security measures employed in connection

with them." (Petitioners' Brief at page 11) It is further insisted that in order to protect this classified information, Petitioners must engage in an administrative shellgame requiring the preparation of an EIS for every site which could possibly house nuclear weapons. In fact, information about the location and general characteristics of such weapons can be readily obtained from public sources. (See for example Exhibit A to this Brief, attached and incorporated herein by reference.)

A. <u>The presence of nuclear weapons at many places in the United States is common knowledge notwithstanding the refusal of the Department of Defense to confirm or deny exact locations.</u>

1. The presence of nuclear weapons is made known to any interested observer by elaborate and conspicuous security devices prescribed for their protection.

The typical nuclear weapons storage site has been described in <u>ARMY</u> magazine:

> The storage sites are usually concrete-and-steel underground 'igloos' surrounded by double anchor chain fences with sophisticated sensors (IDS, or intrusion detection systems) which react to

> noise, magnetism, movement or seismic effect (earth tremor). The igloos are floodlighted at night and constantly guarded. Besides the guards at each site there are 'reaction' or alert forces in nearby hardened buildings ready to defend the site when the alarm sounds. (Army, June, 1977)

More precise and detailed descriptions of the security systems which identify U.S. weapons storage sites can be found in "New Technology for Intrusions Detection at U.S. Bases," by J. Philip Geddes, in International Defense Review, No. 5, 1977; "Security Lighting for Nuclear Weapons Storage Sites: A Literature Review and Bibliography," by Patrick Maguire, Joel Kramer, and Addie Stewart, National Bureau of Standards Special Publication 400-27, November, 1977, and the "Fact Sheet on Safeguards" available from the U.S. Department of Energy.

Security devices matching these specifications have been observed at numerous Defense Department facilities, including the U.S. Naval Weapons storage depots at Seal Beach and Concord, California. (See, for example, the transcript of "Broken Arrow: Can a Nuclear Weapons Accident Happen Here?" a documentary produced by the KQED Public

Affairs Department, Channel 9, San Francisco, and recently aired throughout the country; and "Where the Bombs Are," by David E. Kaplan, New West, April 1981, page 76 et seq.) A 1975 Congressional report on security at nuclear installations concluded that "nuclear storage sites are easily identifiable" by the general public. One of the report's authors stated that, "Very frankly, we do not tell people what is there, but a man would have to be a fool not to know what is there, and there you are." ("Security Review of Certain NATO Installations," Congressional Record, April 30, 1975, page S7185.)

2. In many instances, nuclear weapons have been directly observed by the general public in the vicinity of military bases.

Photographs of a nuclear weapon being loaded aboard a helicopter in Hawaii appeared in newspapers in Honolulu, San Francisco, and Baltimore in 1976. In Seal Beach, California, where nuclear weapons bunkers are readily visible from a nearby highway, nuclear weapons have been photographed being loaded onto ships at a Navy dock and trucks carrying nuclear weapons have been followed as far east as Riverside, California. Kaplan, New West, p. 82.

Authoritative information on the location of nuclear weapons also has been circulated by former workers, guards, and other military personnel in a position to know. Thus, a former Marine security guard said in an interview in "Broken Arrow" (KQED), "I was stationed as a Marine Security Guard in Concord, California, and I was cleared for Secret. It was common knowledge there were nculear weapons stored up on the hill in Concord where all the lights were. My job was to guard them. They were cylindrical objects about ten to twenty feet in length, maybe six feet in width. There was a little sign on them that said they were radioactive material. And we were given a few seminars by the security captain explaining what nuclear arms were, etc."

3. On the basis of independent inquiries by newspapers and periodicals, numerous Defense Department installations have been repeatedly identified as harboring nuclear weapons.

In California alone these installations include the Sierra Army Depot, Castle Air Force Base, Mather Air Force Base, Travis Air Force Base, Moffett Naval Air Station, Alameda Naval Air Station, Lawrence Livermore Laboratory, Mare Island Naval Shipyard,

March Air Force Base, George Air Force Base, Camp Pendleton, North Island Naval Air Station, the San Diego Navy Base, and Seal Beach Naval Weapons Station. (Kaplan, New West; "Broken Arrow"; KQED.) The identification would seem to be accurate considering the large number of warheads that are acknowledged to exist and the widespread deployment of weapons systems that are acknowledged to be capable of carrying them.[1]

4. The nuclear capable launching devices to which the U.S. nuclear warheads are affixed (land-based missiles, submarine-based missiles, aircraft, naval vessels, artillery pieces), are described and illustrated in detail in numerous authoritative journals, including Ships and Aircraft of the U.S. Fleet (Naval Institute Press,

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1. The United States government itself has acknowledged the existence of 20,000 or more nuclear warheads and specified some of the weapons systems to which they are assigned. Thus, in Department of Defense Directive 5210.2 (Joint ERDA/DOD Nuclear Weapons Classification Guide), cited as Appendix H in Appellant's Petition for a Writ of Certiorari:

"Topic 1793...The statement that we

Annapolis, Md.); Aviation Week & Space Technology's annual "Aerospace Forecast & Inventory"; Defense and Foreign Affairs Handbook (Copley & Associates, Washington, DC); International Air Forces and Military Aircraft Directory (Stapleford, United Kingdom, Aviation Advisory Services);

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maintain a total number of nuclear warheads, tactical, as well as strategic, in the tens of thousans is unclassified.

"Topic 1754...The Fact that MINUTEMAN and TITAN and SAFEGUARDS Systems missiles in silos have nuclear warheads in place or that aircraft units in CONUS (Continental United States) known on an unclassified basis to be on nuclear alert have nuclear weapons in place is unclassified.

"Topic 1752...The fact that SSBN's (submarines) on patrol carry 16 missiles with nuclear warheads is unclassified.

"Topic 1771...Location of missile launchers and control centers per se are classified only if expressed more precisely than to the nearest minute in North America Datum System coordinates.

Jane's All the World's Aircraft (Macdonald & Co., London); Jane's Fighting Ships; Jane's Infantry Weapons; Jane's Weapons Systems; Jane's World Armored Fighting Vehicles; and "Military Aircraft of the World" and "Missile Forces of the World," published annually in Flight International (IPC Transport Press, London).

5. The home bases and home ports of these nuclear capable weapons systems are common knowledge or can be readily ascertained by visual observation.

The General Accounting Office has reported that there are more than 600 "nuclear capable units" where the military assembles, maintains and stores its nuclear weapons. ("Accountability and Control of Warheads in the Custody of the Department of Defense and the Energy Research and Development Administration," General Accounting Office, June, 1977.) From time to time nuclear weapons storage sites are explicitly identified by official sources in the ordinary course of business. Thus, the following listing appeared on October 31, 1975, in the Commerce Business Daily, U.S. Department of Commerce publication which lists government contracts being put out for bid:

"Nuclear weapons security at Plattsburg AFB, N.Y. Design for perimeter security lighting, area lighting, emergency power plant, auxiliary surveillance towers, hardening of new and existing surveillance control facility."

B. Even if the location of nuclear weapons storage sites were not a matter of common knowledge in the United States, the information is doubtless known to this nation's presumed adversaries.

The stipulation contained in the U.S. Soviet SALT-I agreement of May, 1972, that "for the purpose of providing assurance of compliance with the provisions (of the agreements) each party shall use technical means of verification at its disposal" rested on the express understanding that the two governments could locate and identify each other's nuclear weapons by means of reconnaissance satellites. (World Armaments and Disarmament, SIPRI Yearbook 1974, Stockholm International Peace Research Institute, Taylor & Francis, Ltd., London, 1974, page 287.) Similarly, the same capabilities were recognized by the SALT-II Treaty, signed in 1979, which provided for reciprocal

satellite verification of the numbers of nuclear weapons-bearing bombers, land-based missiles and submarine-launched missiles on each side.

The Soviet Union since October 31, 1968, has been launching maneuverable photo-reconnaissance satellites with close-look capabilities. At least 35 Soviet photo-reconnaissance satellites were launched in 1979. (SIPRI Yearbook, 1979, page 187.) Soviet equipment is said to match the capabilities of the U.S. Big Bird satellite, which, with a 20-foot focal length camera, can detect an Earth object the size of a coffee mug. At a Congressional hearing in 1973, Major General Edward B. Giller, U.S. Air Force Assistant General Manager for National Security, was asked if the Russians knew where U.S. nuclear weapons were stored. "Most of our stockpile sites have characteristic fence lines, lighting, and communications facilities," he answered. "I would imagine they know where most of them are." (Kaplan, New West, p. 81)

C. The refusal of responsible authorities to acknowledge what is in fact known to the general public or to the nation's presumed adversaries, or both, leaves the government and the public unprepared

to cope with potential dangers arising from the presence of nuclear weapons.

1. There have been many reported accidents involving nuclear weapons.

A 1976 survey listed 63 "serious accidents" involving nuclear weapons of the United States, United Kingdom, France, Soviet Union, and China from 1950 to 1973. (Lloyd J. Dumas, "National Insecurity in the Nuclear Age," Bulletin of the Atomic Scientists, May, 1976.) The Stockholm International Peace Research Institute has estimated 125 accidents, major and minor, involving nuclear weapons in the United States alone between 1945 and 1976. (SIPRI Yearbook, 1977)[2] The government itself has

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2. For example, on the night of September 14, 1977, a giant modified 707 U.S. Air Force jet (135) crashed into a mountain in the highly restricted Manzano Area, a storage facility for nuclear weapons, just after take-off from Kirkland AFB near Albuquerque, New Mexico. All 20 military personnel aboard were killed. The plane had just taken on 7,785 gallons of fuel, and it crashed only 1/2 mile from a bunker containing nuclear materials located 6 miles east from the end of the runway. Four Hills, a

acknowledged the possibility of serious accidents:

> Nuclear weapons are designed with great care to explode only when deliberately armed and fired. Nevertheless, there is always a possibility that, as a result of accidental circumstances, an explosion will take place inadvertently. Although all conceivable precautions are taken to prevent that, such accidents might occur in areas where weapons are assembled, or stored, during the course of loading and transportation, on the ground, or when actually in the delivery vehicle -- an airplane or missile. ("The Effects of Nuclear

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subdivision of Albuquerque, is one mile from the scene of the accident, and residents there were quoted by reports as saying that seconds after the crash, they expected the enormous flash of light to turn into a mushroom cloud. Some residents thought a nuclear weapon had exploded and were in shock. (The Albuquerque Tribune, September 15, 1977, p. 1, Cols. 1-4, p. A-4; Albuquerque Journal, September 16, 1977, page A-1, A-2; Honolulu Star Bulletin, September 15, 1977, p. A-14.)

Weapons," jointly published by the Atomic Energy Commission and Department of Defense.)

2. Such accidents can have grave consequences, even in the absence of detonation of the nuclear material itself.

A recent U.S. Army field manual states, for example, that:

> Detonation of the high-explosive component may pulverize plutonium into minute, invisible particles that are dispersed in smoke and dust which can cause contamination over a large area...Deposits of pulverized plutonium produced when an accident occurs may be resuspended by natural forces, such as the wind, or by personnel, vehicles and low-flying aircraft operating in the area. (Army field manual, "Nuclear Accident Contamination Control." FM 3-15, November 1975.)

It is well known that plutonium, a basic ingredient of nuclear weapons, is one of the most toxic and carcinogenic substances known to man. One millionth of a gram is sufficient to cause lung cancer 15 to 30 years after initial contact. When plutonium was scattered over a 640-acre area following the crash of a B-52 bomber and

destruction of two thermonuclear bombs over Palomares, Spain, on January 17, 1966, some 3.5 million pounds of radioactive soil and vegetation had to be removed. (Lloyd J. Dumas, Bulletin of the Atomic Scientists, May 1976, page 27.)

3. The evidence suggests that many communities in the United States are vulnerable to nuclear weapons accidents and ill-prepared to deal with their consequences.

At the Concord Naval Weapons Station at Concord, California, where weapons are known to be stored, an active earthquake fault lies a mile and a half away, public roads criss-cross the base, an airport is nearby, and an aqueduct passes within a few hundred yards of the weapons bunkers. ("Broken Arrow"; KQED transcript.) With respect to the Alameda Naval Air Station in Alameda, California, a television producer has stated:

> We have learned from Alameda base employees, including a Marine security guard, that nuclear weapons are not only off-loaded at the base, they are stored there as well. The presence of nuclear weapons so close to an air strip and a major population center raises serious public safety issues.

For instance, there is no evacuation plan for the immediate area, which includes downtown Oakland. (Stephen Talbot in "Broken Arrow"; KQED.)

Similarly, the Seal Beach Naval Weapons Station in Seal Beach, California, also believed to be a major storage site for nuclear weapons, is within 10 miles of 10 airports where there are 257,000 plane landings in an average year. Three planes have crashed on base property, one of them leaving a path of flaming jet fuel not far from the weapons storage bunkers. (Kaplan, New West, p. 82.)

D. By Petitioners' own admission, confirmation of the presence of nuclear weapons at a particular location is lawful under the Atomic Energy Act in some circumstances.

It is the firm policy of the U.S. Government to neither confirm nor deny the presence of nuclear weapons or components aboard any ship, station, or aircraft. The only exception is when such a confirmation or denial may be essential to public safety as to allay public alarm. (U.S. Navy Instruction SECNAVINST 5720.44 14 June 1974, emphasis added.)

As amici have argued above, the refusal of responsible authorities to acknowledge at least the possibility of the presence of nuclear weapons at a particular location leaves the government and the public unprepared to cope with potential dangers arising from their presence. Thus confirmation for purposes of preparing an Environmental Impact Statement would fall squarely within the public safety exception specified in SECNAVINST 5720.44.

E. Amici are concerned that Petitioners' refusal to prepare environmental impact statements for storage sites of nuclear weapons in reliance on their policy that they can neither confirm nor deny the presence of nuclear weapons at any particular location leaves no one to examine the potential hazards of stationing and storing nuclear weapons at sites located throughout the United States, some of which are close to major population centers and transportation routes.

Amici agree with Respondents that it is not ever necessary to confirm the presence of nuclear weapons at West Loch in order to comply with the mandates of NEPA since an EIS would merely examine the impacts of "potential" storage of nuclear weapons rather

than affirmatively state that such weapons are present. Nonetheless, the facts set forth above indicate that Petitioners' non-acknowledgement policy should be insufficient to shield them from compliance with the procedural mandate of NEPA. It should be clear that the danger to which this policy exposes the American public far outweighs whatever minute advantages it may present.

III

RESPONDENTS AND THE GENERAL PUBLIC HAVE A RIGHT TO THE REQUESTED INFORMATION BY VIRTUE OF THE PUBLIC POLICY EMBODIED IN NEPA, RECENT FEDERAL STATUTES AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

A. Wholly apart from the question as to what information regarding nuclear weapons storage is already in the public domain, the public has a right to information on the subject in order to enable its members to make informed decisions affecting their lives, liberty and their pursuit of happiness.

The legislative history of NEPA evidences the desire and need to establish "clear and open lines of communication between the Council [on Environmental Quality] and the

public. The Council should also consider the impact of its activities upon the educational system, together with ways and means of continuing the growing trend toward public enlightenment on and concern with the important environmental issues that we confront." (H. Rep. 90-378, 1969 U.S. Code Congressional and Administrative News 2751, 2758, emphasis added.)

This policy was codified in NEPA at 42 U.S.C. 4331(a) where Congress "declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments and other public and private organizations...to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." (emphasis added)

The increasing Congressional concern with providing information to the public about present and potential hazards in order to enable it to actively participate in governmental regulatory decisions is reflected in recent legislation enacted to protect the public from the multitude of risks inherent in an industrialized society. Congressional recognition of the high degree

of informed public participation that is essential in the control process is evident in the Pesticide Control Act, 7 U.S.C. 136 et seq.; the Solid Wastes Disposal Act, 42 U.S.C. 6901 et seq. and the Water Pollution Control Act, 33 U.S.C. 1251 et seq., all of which contain provisions requiring public participation and dissemination of information.

Behind this growing Congressional trend is a desire on the part of lawmakers to avoid what has become an all too common modern experience -- that of awakening one mroning to a newscast informing one that he or she has been living atop a chemical dump, that his or her water supply is contaminated with radon-emitting uranium tailings or that his or her air has been infected with bacteria released pursuant to Army experiments.

Russell E. Train, former Administrator of the E.P.A., addressed himself to this issue as follows:

> Most Americans had no idea, until relatively recently, that they were living so dangerously. They had no idea that when they went to work in the morning, or when they ate their breakfast---that when they did the

> things they had to do to earn a living and keep themselves alive and well--- that when they did things as ordinary, as innocent and as essential to life as eat, drink, breathe or touch, they could, in fact, be laying their lives on the line. They had no idea that, without their knowledge or consent, they were often engaging in a grim game of chemical roulette whose result they would not know until many years later. (Quoted in the legislative history of the Toxic Substances Control Act, Title 15, Section 2601, U.S. Code Congressional and Administrative News Vol. 4, 94th Cong. 1976, 2d session P.L. 49-469 at page 4493.)

It is interesting to note that as far back as 1954, when the amendments to the Atomic Energy Act were passed, this concern was made an express policy of the act. In its statement of policy regarding the dissemination and declassification of restricted data the Act states:

> The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism

which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information. 42 U.S.C 2161(b)

B. The Fifth Amendment of the United States Constitution prohibits federal actions which deprive a person of life, liberty and the pursuit of happiness without due process of law.

1. Substantive Due Process: The Federal Government can neither take any action nor refrain from taking any action which deprives an individual or group of individuals from enjoying a constitutionally protected "liberty" interest.[3]

The "liberty" interest has been delineated in the context of matters affecting personal decisions such as family relationships, child-rearing and education. See Meyer v. Nebraska, 262 U.S. 390, 399 (1923). In

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3. The concept of "federal action" for Fifth Amendment purposes is determined in the same way as is "state action" for Fourteenth Amendment purposes. Public Utilities Commission v. Pollak, 343 U.S. 451 (1952); Simkins v. Moses H. Cone Memorial Hospital, 323 F. 2d 959 (en banc) (4th Cir. 1963) cert den. 376 U.S. 938 (1964).

Meyer v. Nebraska, the court held that the concept of liberty in the Fourteenth Amendment

> denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. (emphasis added)

Other cases have found the liberty interest in activities relating to marriage: Loving v. Virginia, 388 U.S. 1, 12 (1967); procreation: Skinner v. Oklahoma, 316 U.S. 535, 541-542 (1942); child rearing and education: Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925).

Meyer holds that the right to obtain information is a protected liberty under the due process clause of the U.S. Constitution. Respondents herein are denied access to useful information which would be contained in an Environmental Impact Statement. Such information is essential to make decisions

regarding the very same constitutionally protected rights as enunciated in Meyer, supra.

In addition to the right to obtain information to enable one to make informed decisions regarding fundamental personal questions, there is an emerging right of citizens to be protected in our natural and personal state of life and health, as noted in Environmental Defense Fund, Inc. v. Hoerner Waldorf Corp. 3 ELR 20794 (D. Mont. 1970).[4]

In EDF v. Hoerner Waldorf, supra, the court held:

> I have no difficulty in finding that the right to life and liberty and property are constitutionally protected. Indeed the Fifth and Fourteenth Amendments provide that these

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4. This interest has also been defined as the right "to live in an environment that preserves the unquantified amenities of life," Environmental Defense Fund, Inc. v. Corps of Engineers of the U.S. Army, 325 F. Supp. 728, 739 (E.D. Ark. 1970), and the right to a healthful environment, Pinckney v. Ohio EPA, 375 F. Supp. 309-310 (N.D. Ohio, 1974).

> rights may not be denied without due process of law, and surely a person's health is what, in a most significant degree, sustains life.
>
> So it seems to me that each of us is constitutionally protected in our natural and personal state of life and health...

In this light, Board of Regents v. Roth, 408 U.S. 564 (1972) is worthy of note:

> ...[A] weighing process has long been part of any determination of the form of hearing required in particular situations by procedural due process. But, to determine whether due process requirements apply in the first place, we must look not to the "weight" but to the nature of the interest at stake. (at 570-571)

Respondents and amici have demonstrated that Petitioners' reliance on the fearful consequences attending dissemination by an EIS of "restricted data" is misplaced. Weighed against the policy of recognizing a right to informed decision-making by the public on questions concerning health and safety, a right wholly dependent on the release of such information as required by case and statutory law, the Petitioners'

rationale must be found wanting.

> In the words of one court:
>
> No subject to be covered by an EIS can be more important than the potential effects of a federal program upon the health of human beings. (Citizens Against Toxic Sprays, Inc. v. Bergland, 428 F. Supp. 908, 927 (D.C. Ore. 1977))

2. Procedural Due Process: The interests that are protected by procedural due process are normally not created by the Constitution. They are created, and their dimensions defined, by an independent source such as statutory law. Goss v. Lopez, 419 U.S. 565, 572 (1975). The minimum that is constitutionally required is that deprivation of life, liberty or property is preceded by notice and opportunity to be heard. Boddie v. Connecticut, 401 U.S. 371, 378 (1971).

Under NEPA the public has a right to receive any "detailed statement" and the comments and views of the appropriate federal, state and local agencies. 42 U.S.C. §4332. The involvement of the public through NEPA in the decisions of federal agencies is delineated at 40 C.F.R. §1506.6. In addition, NEPA procedures must ensure that environmental information is available to public officials and citizens before

decisions are made and actions are taken. 40 C.F.R. §1501.4(b).

Further regulations promulgated pursuant to NEPA provide that to the fullest extent possible, federal agencies shall encourage and facilitate public involvement in decisions which affect the quality of the human environment. 40 C.F.R. §1500.2(a). (Additional regulations involving the public in the EIS process are found in 40 C.F.R. §1503.1(a)(4) and 1505.1(e), 1506.6(c)(1) and in Executive Order No. 11514, Section 2(b), March 5, 1970.)

In the instant case the public was not given vital information and was therefore unable to respond to the issues raised by the expanded storage of nuclear weapons at the West Loch facility. As the statements issued by the federal agencies were not site-specific, they were not detailed statements within NEPA's mandate.

The dimensions of Respondents' and the public's right to procedural due process in the factual situation presented by this case have been defined by NEPA and the regulations promulgated pursuant to it. Petitioners, by their actions in refusing to prepare and to disseminate an EIS, have denied them information and due process

rights to which they are entitled.

IV

CONCLUSION

The Petitioners point out that the logical imperative of preparing an EIS for every potential site of nuclear weapons storage would be "unsettling" and would give citizens a disconcertingly inflated impression of the amount of nuclear weaponry that surrounds them. (Petitioners' Brief, pp. 24-25.) Petitioners' concern is misplaced. Citizens must and do deal daily with the spectre of nuclear war and their vulnerability to nuclear attack or radioactive release. The premise that the public cannot be entrusted with basic facts concerning their own health and safety is a fundamentally unsettling notion. Contrary to Petitioners' view, ignorance is not bliss.

Amici therefore join with Respondents in urging that the ruling of the United States Court of Appeals for the Ninth Circuit be upheld and that the Petitioners be ordered to comply with the EIS provisions of the National Environmental Protection Act.

Respectfully submitted,

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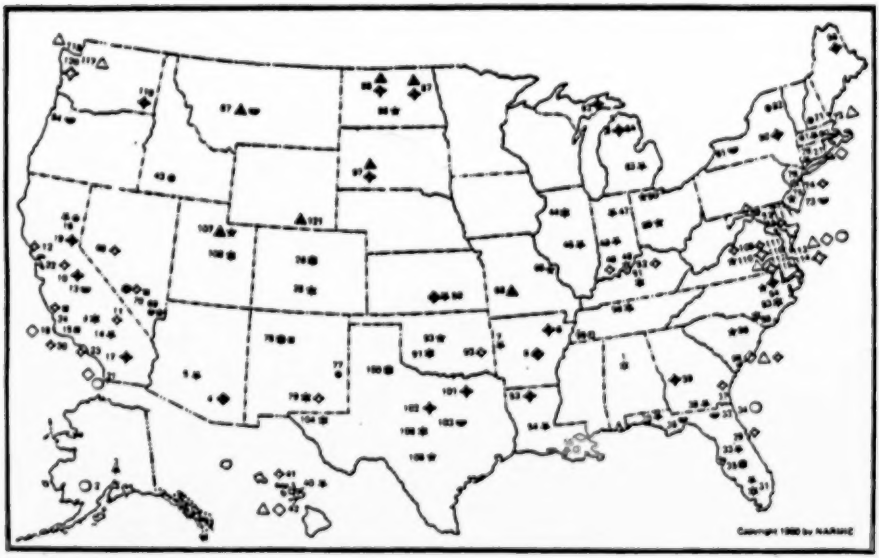
EXHIBIT A

EXHIBIT: A

Nuclear Weapons Storage and Deployment Sites



ARMY
- arsenal, very likely storage
- training with nuclear capable weapons

NAVY
- nuclear capable surface ships
- nuclear attack submarine
- ballistic missile submarine
- nuclear capable ports
- testing/storage site

AIR FORCE
- MINUTEMAN II, III
- TITAN II, III
- B-52
- F-111 and FB-111
- F-101 and F-105
- other nuclear capable planes
- storage facility likely

DEPARTMENT OF ENERGY
- production, testing or storage

Information in this publication is from government, industry, and military sources, including House and Senate hearings, *Army* (magazine) and *Air Force* (magazine). Publications of the Stockholm International Peace Research Institute and the Center for Defense Information were also consulted.

The United States nuclear weapons arsenal consists of about 9,900 strategic and 20,000 tactical nuclear warheads and a variety of weapon systems capable of delivering them. At least 40 of the 50 states house bases or installations which either serve or could serve as nuclear weapons storage or deployment sites. These sites pose grave dangers for those living and working near them. They would be targeted for nuclear war; they are potential objects of sabotage, and they present health and safety hazards.

Either "strategic" or "tactical" nuclear weapons are located in the 121 sites identified. A "strategic" weapon is designed to knock out the warmaking capability of an enemy; "tactical" weapons are for "battlefield" use. The Pentagon's strategic nuclear weapons force is based on the "triad", a combination of land-based missiles, sea-based missiles, and manned bombers. Strategic nuclear weapons include the MINUTEMAN II & III, TITAN I & II MISSILES, B-52 and F-111 bombers, and POLARIS/POSEIDON submarines. New strategic weapons under development include the TRIDENT submarine, MX missile, and some types of the cruise missile. Tactical nuclear weapons include LANCE and PERSHING missiles, nuclear artillery (8 in. and 155 mm. nuclear howitzers), and nuclear land mines (SADM and MADM).

The bomb used on Hiroshima had a 13.5 kiloton yield. Today the U.S. arsenal possesses nuclear weapons ranging from "small" nuclear-tipped missiles of less than .05 kt to the TITAN II with a 5 megaton yield.

The Department of Defense and the Department of Energy oversee the development, construction, storage, and decommissioning of nuclear weapons. Many people have held positions in both departments, some simultaneously. James Schlesinger acted as Secretary of both DOE and DOD, and Charles W. Duncan, General Bratton, and Admiral Rickover have occupied key positions in both departments. The DOE is a civilian agency, and yet about 40% of its budget is weapons related. The DOE is responsible for research and development, production of weapons grade uranium and plutonium, security systems, transportation, and reprocessing of nuclear warheads. The DOD manages delivery systems, deployment, storage, security, and training of personnel in the use of nuclear weapons systems. When the DOD estimates the cost of a weapons system, it normally does not include the cost of warheads, which the DOE provides.

U.S. military policy prohibits either confirming or denying the presence of nuclear weapons. The shroud of secrecy surrounding the testing, production, and storage of nuclear weapons makes it difficult to verify the location of all sites. The protection of this immense stockpile of destruction requires constant surveillance, which cost more than $108,120,000 in FY 1978 alone. The weapons located in this country are potentially dangerous to the people living here, as well as to any potential enemy.

NUCLEAR WARHEADS CARRIED BY WEAPONS SYSTEMS

AIR FORCE	
B-52	"up to 20 Short Range Attack Missiles (SRAM) (nuclear warheads)...together with up to 4 Mk 28 weapons"
F-4 (C/D/E/F)	"provision for carrying...up to 16,000 lbs. of nuclear...bombs and missiles"
F-16	"air-to-air and air-to-surface munitions"
F-100 (C/D)	"underwing pylons for six 1,000 lb. bombs"
F-105 (D/B)	"more than 14,000 lbs. of stores under fuselage and wings"
F-106	"one AIR-2A Genie unguided nuclear warhead rocket"
F-111	"two nuclear bombs in internal weapons bay"
FB-111	"up to (six) AGM-69A SRAM air-to-surface missiles...or six nuclear bombs"
MINUTEMAN II	"LGM-30F single thermonuclear warhead"
MINUTEMAN III	"LGM-30G multiple thermonuclear warheads"
TITAN II	"thermonuclear (largest yield in U.S. nuclear arsenal)"
ARMY	
HONEST JOHN	(MGR-1B) "1 kiloton yield nuclear payload"
HOWITZER (8")	"will carry XM753 nuclear round now under development"
HOWITZER (155mm)	"can fire a nuclear projectile"
LANCE missile	"M234 nuclear warhead...1 kiloton yield"
NIKE-HERCULES	"designed to break up whole formations of aircraft with nuclear warheads"
NAVY	
A-7	"15,000 total weight (of armaments)"
Aircraft carriers (13)	carries 24 F-4's
Cruisers (28)	Anti-Submarine Rockets (ASROC)
Destroyers (72)	"1 8" tube ASROC launcher or ASROC anti-submarine warfare missiles"
Frigates (65)	ASROC
P-3 A/C	Anti-Submarine Torpedoes (ASTOR) missile
POLARIS/POSEIDON (submarine)	(31) TRIDENT missiles (10) ballistic missiles
Attack submarine (73)	Anti-Submarine Rocket Missile (SUBROC)

NUCLEAR WEAPONS STORAGE AND DEPLOYMENT SITES

State	Map Number	Installation—Location	Delivery Systems or Type of Facility
Alabama	1	Redstone Arsenal	Missile and munitions center and school
Alaska	2	Adak Naval Station	nuclear-capable Naval surface ships
	3	Elmendorf AFB	F-4
Arizona	4	Davis-Monthan AFB	TITAN II
	5	Luke AFB	F-4
Arkansas	6	Blytheville AFB	B-52
	7	Ft. Smith	F-100D
	8	Little Rock AFB	TITAN II
California	9	Angeles National Forest	Army 19th Artillery Weapons Storage
	10	Castle AFB	B-52
	11	China Lake NWS	Naval weapons station
	12	Concord NWS	Naval weapons station
	13	Fresno	F-106
	14	George AFB	F-4 C/E/G
	15	Los Angeles AFB	development, production, delivery of ballistic missiles
	16	McClellan AFB	F-111, FB-111, F-100, F-105
	17	Moron AFB	B-52
	18	Mare Island Naval Shipyard (Vallejo)	Five attack submarines
	19	Mather AFB	B-52
	20	Point Mugu NAS	Pacific missile test center
	21	San Diego Navy Base	three guided missile cruisers, twelve attack submarines
	22	San Francisco Bay Naval Shipyard	missile testing
	23	Seal Beach NWS	ASROC, SUBROC, TALOS (Naval weapons)
	24	Vandenberg AFB	ICBM test facilities (Navy and A.F.)
Colorado	25	Fort Carson	Army nuclear weapon storage
	26	Rocky Flats	plutonium triggers (part of warhead)
Connecticut	27	Groton/New London Naval Submarine Base (Thames River)	twenty attack subs, ballistic missile subs
	28	Windsor Locks	F-100
Florida	29	Cape Canaveral	TRIDENT testing
	30	Eglin AFB, Hulbert Field	F-4E
	31	Homestead AFB	F-4E, NIKE HERCULES
	32	Jacksonville AFS	F-106
	33	MacDill AFB	F-4D/E, F-16
	34	Mayport NS	nuclear-capable surface ships
	35	Pinellas	neutron devices
	36	Tyndal AFB	F-106; air defense weapons center
Georgia	37	King's Bay (Navy)	sub support base
	38	Moody AFB	F-4E, F-4
	39	Robins AFB	B-52
Hawaii	40	Hickam AFB	F-4
	41	Lualualei Naval Magazine	warheads for ballistic missile subs and attack subs
	42	Pearl Harbor Naval Submarine Base	14 attack subs, ten ballistic missile subs
Idaho	43	Mountain Home AFB	F-111A
Illinois	44	Rock Island Arsenal	Army munitions
	45	Springfield	F-4C
Indiana	46	Crane NWSC	naval weapons
	47	Ft. Wayne	F-4C
	48	Indiana AAP	155 mm howitzers, 8" howitzers
	49	Terre Haute	F-100D
Kansas	50	McConnell AFB	F-105, F-4, TITAN II
Kentucky	51	Louisville (Army National Guard) Corps Artillery	HONEST JOHN (MGR1B)
	52	Louisville Ordnance Station (Navy)	naval weapon
Louisiana	53	Barksdale AFB	B-52
	54	England AFB	A-7
	55	New Orleans NAS	F-100, F-4C
	56	Loring AFB	B-52
Maine	57	Andrews AFB	F-105D, F-4
Maryland	58	Indian Head Naval Ordnance Station	naval weapons
	59	White Oak Naval Surface Weapons Center	naval weapons
	60	Otis AFB	F-106
Massachusetts	61	Westfield	F-100D
	62	K.I. Sawyer AFB	B-52
Michigan	63	Selfridge ANGB	F-4C/D
	64	Wurtsmith AFB	B-52
	65	St. Louis	F-4C
Missouri	66	Whiteman AFB	MINUTEMAN II
	67	Malmstrom AFB (Great Falls)	F-106, MINUTEMAN II, III
Montana	68	Hawthorne Naval Ammunition Depot	naval weapons
Nevada	69	Nellis AFB	F-4D/E, F-111E/F, F-16
	70	Nevada Test Site	testing by DOE and all military branches
	71	Pease AFB	FB-111
New Hampshire	72	Portsmouth	ballistic missile subs
	73	Atlantic City	F-106
New Jersey	74	Earle Naval Weapons Station	naval weapons
	75	McGuire AFB	F-105B
	76	Picatinny Arsenal	radiological testing of weapons
	77	Cannon AFB	F-111D
New Mexico	78	Kirtland AFB (Manzano)	nuclear weapons laboratory storage of "obsolete" weapons
	79	White Sands Missile Range	missile testing
	80	Griffiss AFB	B-52
New York	81	Niagara Falls International Airport	F-101
	82	Plattsburgh AFB	FB-111

State	Map Number	Installation—Location	Delivery Systems or Type of Facility
North Carolina	83	Fort Bragg (Fayetteville)	Army munitions
	84	Seymour-Johnson AFB	F-4F, B-52
	85	Sunny Point Military Ocean Terminal	ammunition shipping point
North Dakota	86	Fargo	F-4C/D
	87	Grand Forks AFB	B-52, MINUTEMAN III
	88	Minot AFB	B-52, MINUTEMAN III
Ohio	89	Springfield	F-100, A-7
	90	Toledo	F-100D
Oklahoma	91	Ft. Sill	LANCE missiles
	92	McAlester Naval Ammunition Depot	Naval weapons
	93	Tinker AFB	F-105D/F
Oregon	94	Portland (ANG)	F-101
South Carolina	95	Charleston Fleet Ballistic Missile Submarine Center	five attack subs, POLARIS subs, ballistic missile subs (also will have TRIDENT)
	96	Shaw AFB	F-4, F-4D
South Dakota	97	Ellsworth AFB	B-52, MINUTEMAN II
Tennessee	98	Clarksville (Army)	Army munitions
	99	Memphis NAS	nine P-3A's
Texas	100	Amarillo (Pantex)	(DOE) final assembly of nuclear weapons
	101	Carswell AFB	B-52
	102	Dyess AFB	B-52
	103	Ellington AFB (ANG)	F-101
	104	Ft. Bliss	NIKE HERCULES
	105	Kelly AFB	F-4C
	106	Killeen	Defense Atomic Support (weapons storage)
Utah	107	Hill AFB	MINUTEMAN silo, F-4D, F-16, F-105B
	108	Salt Lake City (Army National Guard) Field Artillery Unit	HONEST JOHN unguided artillery rocket
Virginia	109	Advanced Undersea Weapons Compound (exact location not known)	storage of naval nuclear weapons
	110	Byrd Field (Sandston)	F-105D
	111	Dahlgren Navy Surface Weapons Lab	Navy weapons storage
	112	Newport News	ballistic missile submarine
	113	Norfolk Naval Station	ballistic missile, attack, POLARIS subs and nuclear capable surface ships
	114	(Oceana NAS) Virginia Beach	Navy weapons storage, testing of MK 88, MOD-1
	115	St Juliens Cr. NWS	Navy weapons storage
	116	Yorktown NWS	Navy weapons storage
Washington	117	Bangor	TRIDENT
	118	Bremerton Polaris Missile Facility	POLARIS, POSEIDON
	119	Fairchild AFB	B-52
	120	Keyport Torpedo Station	torpedos
Wyoming	121	F.E. Warren AFB	MINUTEMAN III

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